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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/610,955

07/01/2003

David Myr

MAK-104US

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EXAMINER

VIG, NARESH

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/610,955	<b>Applicant(s)</b> MYR, DAVID	
	<b>Examiner</b> NARESH VIG	<b>Art Unit</b> 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This is in reference to communication received 19 July 201. Claims 1 – 12 are pending for examination.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 – 12 are not patentable because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent<sup>1</sup> and recent Federal Circuit decisions, A "process" under § 101 must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing or (3) the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility, furthermore, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity<sup>2</sup>. If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101 and should be rejected as being directed to nonstatutory subject matter. Moreover, the recitation of "computer implemented" in the preamble with the absence of

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<sup>1</sup> *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)

<sup>2</sup> *The Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advances.* *Gottschalk v. Aenson*, 409 U.S. 63, 71 (1972), *In re Bilski*, Fed. Cir. 2007-1130

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a computer in the body of the claim or a lack of “another statutory class” in the body of the claim does not make the claim statutory.

Applicant’s claimed invention is directed to a human calculating appraisal of a real estate buy programming a programmable calculator with a nonlinear function, entering the data and generating an appraised value.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 – 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specification, while being enabling for a human to perform nonlinear programming of a microprocessor for all of the different types of appraisal approaches by adjusting the control variables within the corresponding range of influence factor values, does not reasonably provide enablement for microprocessor to perform the nonlinear programming for all of the different types of appraisal approaches by adjusting the control variables within the corresponding range of influence factor values.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 – 12 are rejected under 35 U.S.C. 112, second paragraph, as being vague to determine the scope of the subject matter which applicant regards as the invention.

As currently claimed, it is not clear whether a human performs the programming of the microprocessor, or, microprocessor performs the programming of itself. Also, applicant has not positively claimed if any action is performed with the generated appraisal of the real estate. For example, provided to the user, used to generate an appraisal report, etc.

### ***Response to Arguments***

Applicant's arguments and concerns are for amended claims which have been responded to in response to amended claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1 – 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robbins US Publication 2001/0039506 in view of Modern Real Estate Practice by Galaty et al. hereinafter known as Galaty and Bradley et al. US Patent 7,711,574.**

Regarding claims 1 and 12, as best understood by examiner, Robbins teaches computer-implemented system and method for appraising a real estate property. Robbins does not explicitly recite using all three sales comparison approach, an income capitalization approach and a cost approach as different types of appraisal approaches. However, Robbins teaches that in determining the market value of a subject property an appraiser generally considers three separate approaches to value; the Cost Approach, the Income Approach, and the Sales Comparison Approach [Robbins, 0080]. Galaty teaches that appraisers use three basic valuation techniques: the sales comparison approach, the cost approach and the income approach as checks against each other for narrowing the range within which the final estimate of value falls [Galaty, page 304, last paragraph].

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Robbins with teachings of Galaty and generate appraisal using sales comparison approach, the cost approach and the income approach to make the appraisal more useful by checking valuations from different approaches against each other for narrowing the range within which the final estimate of value falls, apply a known technique to a known device (method, or product) ready for improvement to yield predictable results, known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art.

Even though, Robbins in view of Galaty does not teach what formula(e) it uses to to determine appraised value of a real estate, however, it is obvious that Robbins in view of Galaty uses some formula(e) to calculate appraised value of a real estate. Bradley teaches system and method for calculating appraised valued of property using nonlinear functions and plurality of influence factors [Bradley, col. 16].

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art to modify Robbins in view of Galaty by adopting teachings of Bradley and use nonlinear functions to prevent reappraisal of property by generating reliable appraisals; apply a known technique to a known device (method, or product) ready for improvement to yield predictable results; known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design

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incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art.

Robbins in view of Galaty and Bradley teaches concept and capability for:

storing influence factors and a range of influence factor values for each of different types of appraisal approaches [Galaty, page 313; Robbins, [0032], claim 56; Bradley, col. 11, Table 2]

defining a nonlinear objective function that can include control variables representing the stored influence factors for all of the different types of appraisal approaches [Bradley, col. 16];

using and causing a microprocessor to perform nonlinear programming of the nonlinear objective function to simultaneously optimize the nonlinear objective function for all of the different types of appraisal approaches by adjusting the control variables within the corresponding range of influence factor values (**a human initiates the application on a microprocessor and enters data**) [Bradley, col. 16]; and

indicating an optimal range of appraisal values for the real estate property from the optimized nonlinear objective function according to each of the different types of appraisal approaches (Using teachings of Galatay, calculates the appraisal value) [Robbins, in view of Galaty, page 305-313; Bradley, col. 16],

generating an appraisal of the real estate property based on the optimal range of appraisal values [Robbins, Bradley]

an output for providing signals indicative of the optimal range of appraisal values for the real estate property [Robbins, Bradley],



wherein each of the different types of appraisal approaches are a sales comparison approach, an income capitalization approach and a cost approach [Robbins in view of Galaty], and all of the different types of appraisal approaches can be used together to optimize the nonlinear objective function.

Regarding claim 2, as best understood by examiner, Robbins in view of Galaty and Bradley teaches capability for optimizing the stored range of influence factors values of each of the different types of appraisal approaches.

Regarding claim 3, as best understood by examiner, Robbins in view of Galaty and Bradley teaches capability for eliminating all discrepancies or outliers of the stored influence factors.

Regarding claim 4, as best understood by examiner, Robbins in view of Galaty and Bradley teaches capability for obtaining a respective optimal range of appraisal values for each of the different types of appraisal approaches.

Regarding claim 5, as best understood by examiner, Robbins in view of Galaty and Bradley teaches capability for performing a feasibility study to determine whether the optimal range of appraisal values meets predetermined economic return requirements for the real estate property.

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Regarding claim 6, as best understood by examiner, Robbins in view of Galaty and Bradley teaches capability for performing a sensitivity analysis using the stored influenced factors for each of the different types of appraisal approaches together to determine a sensitivity of the optimal range of appraisal values to changes in each of the stored influence factors.

Regarding claim 7, as best understood by examiner, Robbins in view of Galaty and Bradley teaches capability to reconcile the optimal ranges of appraisal values for each of the different types of appraisal approaches.

Regarding claim 8, as best understood by examiner, Robbins in view of Galaty and Bradley teaches capability to search for combinations of the stored influenced factors that automatically produce a same optimal value as for the influence factors stored individually

Regarding claim 9, as best understood by examiner, Robbins in view of Galaty and Bradley teaches capability for performing a highest and best use analysis to determine a financial feasibility criteria for each separate use;

Regarding claim 10, as best understood by examiner, Robbins in view of Galaty and Bradley teaches capability wherein the nonlinear objective function uses project periods that are considered in one of the different types of appraisal approaches

Regarding claim 11, as best understood by examiner, Robbins in view of Galaty and Bradley teaches capability for calculating different capitalization rates that are considered in one of the different types of appraisal approaches.

### ***Conclusion***

Applicant is required under 37 CFR '1.111 (c) to consider the references fully when responding to this office action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to NARESH VIG whose telephone number is (571)272-6810. The examiner can normally be reached on Mon-Thu 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jamisue Plucinski can be reached on (571) 272-6811. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 16, 2010

/Naresh Vig/  
Primary Examiner, Art Unit 3629